

Joint Meeting of the
Senate Education Subcommittee on Administrative Rules
House Education Subcommittee on Administrative Rules

Senate Majority Caucus Room 350 - Statehouse
Boise, Idaho
November 5, 2004
9:00 A.M.

SUMMARY OF MEETING
(Subject to approval of the subcommittees)

Under Docket Number 08-0204-0402, the State Board of Education promulgated a new Chapter 04, Title 02, IDAPA 08 "Rules Governing Public Charter Schools" as both a temporary rule effective April 1, 2004, and as a proposed rule. Under Docket Number 08-0301-0401, the State Board of Education promulgated a new Chapter 01, Title 03, IDAPA 08 "Rules of the Public Charter School Commission" as both a temporary rule effective July 21, 2004, and as a proposed rule.

In accordance with the provisions of the Administrative Procedure Act at Section 67-454, *Idaho Code*, two members of the subcommittees, Senator Gary Schroeder and Senator Elliott Werk, requested that a meeting be held regarding these promulgations. The meeting was held on November 5, 2004.

Members of the subcommittees in attendance were: Senator Gary Schroeder, Senator Tom Gannon, Representative Jack Barraclough, and Representative Donna Boe. Senator Elliott Werk and Representative Dennis Lake were absent and excused. Legislative Services staff were Maureen Ingram and Charmi Arregui.

Others in attendance were Jeff Schrader and Karen Echeverria, State Board of Education; Susan Campbell, Deputy Attorney General; Jan Sylvester; Cindy Schiller; Laurie Boeckel; and June Blackhurst.

Senator Gary Schroeder, chairman of the Senate Education Committee, presided over the joint committees as prescribed by Joint Rule 11.

With regard to the proposed new rule on charter schools, Senator Schroeder raised questions concerning terminology, intent and implementation. Staff of the State Board of Education responded to all questions. Resolution of the issues fell into four categories:

- A. Staff of the State Board of Education agreed to present the following changes to the State Board of Education for possible inclusion in the pending rule. The board will meet on November 12, 2004.*
 - 1. Page 196 Section 010.11 School year. From August 1 through July 31, to July 1 through June 30.
 - 2. Page 196 Section 100.02. Terminology in last sentence refers to "petitioners"; it

was suggested that “board of directors of the public charter school” would be more accurate.

3. Page 196 Section 100.03 and .04. Terminology using “permitted to begin operations during a school year” should be reworded to provide more clarity regarding the timing when the State board places an approved charter school on its list and when that charter school opens its doors.
4. Page 197 Section 200.03 and other sections in rule with similar context. Terminology of “filed” should be replaced with “submitted.” Senator Schroeder distributed copies of a definition of “submit.”
5. Page 197 Section 202. “Founder” definition mirrors law, but the meaning of “making a material contribution to the establishment of a public charter school” was questioned; and the suggestion was made that there should be provision for initially identifying and recording such persons.
6. Page 197 Section 203.01. Add language to specify to whom it can be demonstrated that there are reasons for varying from the Board’s model admission procedures.
7. Page 197 Section 203.02. When distributing enrollment information, delete the requirement in rule which mandates the material must be printed in both English and Spanish.
8. Page 198 Section 203.03. Terminology of “enrollment” should be changed to “admissions” when appropriate for clarity.
9. Page 198 Section 203.04. Clarify that charter schools open the request for admission each year, and that each year a new list must be compiled. (Section 33-5205(3)(i), *Idaho Code*, states that there “shall be **no** carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted **each year** to fill vacancies which become available.”
10. Page 199 Section 203.09.b. Terminology of a “neutral third party” as part of the equitable selection process. It was requested that this terminology should be more specific.
11. Page 200 Section 203.11.a. and c. Senator Schroeder questioned whether there was “opportunity for mischief” regarding the time frames specified for response to a charter’s offer of admission to the school. He suggested more precision, as a standard time certain for all responses to such offers rather than “by the date designated in such offer letter...”
12. Page 203 Section 302. Charter revisions and its administrative process including time limits. Request to provide that revisions are reviewed in the same manner as an original petition is reviewed.

- B. State Board of Education staff satisfactorily explained the rule provisions, showing they were correctly written in accordance with law, or staff adequately described how the provisions of rule under question will be interpreted and implemented; not necessary to present a change to the State board.
1. Page 198 Section 203.05. through .09. Senator Schroeder distributed copies of an objective review analysis (dated October 18, 2004) prepared by the Attorney General's Office in response to Senator Schroeder's questioning whether the admissions procedures using the lottery process or other random method, are required when initial or subsequent capacity of the charter is insufficient; and alternatively, the amount of discretion that a board of directors has in such a selection process. The review states the rule is consistent with law.
 2. Page 198 Section 203.06 and .07. Admission and priority of preferences for initial enrollment and enrollment in subsequent years. Selection process for giving preference for up to 10% of school's capacity to children of founders was explained; rule follows law.
 3. Page 202 Section 206.03. What constitutes "posting notice" of meetings was questioned; it does not provide a statewide standard. Given the rule provision for a reasonable good faith effort and the provisions of the open meeting law, the rule is adequate.
 4. Page 202 Section 300.03. Enforcement of annual reporting requirement, of a charter school to its chartering entity was questioned as was the state board's role in enforcement of the requirement. According to staff of the state board, the state board has met its mandate pursuant to Section 33-5203(6), *Idaho Code*.
 5. Page 205 Section 401.05. Prehearing conference provisions have no direct statutory equivalent, but the state board has adequate authority to include such a provision in rule.
 6. Page 206 Section 402. Appeal procedure. It was questioned whether new material could be added at any time between the version seen by the local chartering entity and the appeal version as reviewed by the State Board of Education. Staff of the state board responded that there can be no changes and that the state board would be dealing with the same version as was submitted to the local chartering entity.
 7. Page 209 Section 404. Ex parte communications. Rule provision is based on current statute at Section 67-5253, *Idaho Code*; it restates there can be no outside influences during an appeals process. Rule creates the same protection as law.
- C. Legislative Services staff was requested to conduct research for possible amendment to law.

1. Page 195 Section 010.06. Definition of “founder” in both law and rule relies on terminology of one who “makes a material contribution to the establishment of a public charter school in accordance with criteria determined by the board of directors...The designation of a person as a founder....shall not constitute pecuniary benefits.” The latitude of this was questioned. It was further suggested that a list of original founders should be compiled and made public. Current law on this point states that a founder shall be “designated as such at the time the board of directors acknowledges and accepts such contribution.” According to staff of the state board, the definition in law provides considerable latitude in its interpretation.
 2. Page 196 Section 100.04. Can the state board by current law and rule “pre-approve” charters schools to begin operations in a future school year beyond the one immediately following the current year? The State Board of Education is directed by law at Section 33-5203, *Idaho Code*, to adopt rules establishing a consistent application process in accordance with statutory limits on the number of charter schools which may be approved for any one school year.
- D. Staff of the state board indicated they have identified areas of conflict in the law which made it difficult to write rules based on the law. Request was made to state board staff to submit those to Legislative Services staff with suggestions for possible amendment by the 2005 Legislature.
1. Page 200 Section 204.02. The question was raised whether or not petitioners for a new public virtual school could apply directly to the Public Charter School Commission and whether the rule was attempting to allow this when it could be interpreted that the wording in Section 33-5203(5), *Idaho Code*, might not allow it. However, another law at Section 33-5205(1)(a), *Idaho Code*, allows a petition for a new virtual school to first be submitted to a local board of trustees, which has the option of referring the petition to the commission. Also, there is provision in that same section of law for the petitioners to withdraw their petition from the local board and submit it to the commission under certain conditions. In addition, the discussion encompassed costs of online instruction versus instruction through a virtual school. Finally, the discussion lead to the issue of enforcement, at which time Senator Schroeder distributed copies of an objective review analysis (dated October 18, 2004) prepared by the Attorney General's Office. The review states the authority for enforcement is the responsibility of the chartering entity and that such entity may take steps to enforce the charter or revoke it as provided in Section 33-5209, *Idaho Code*.
 2. Page 201 Section 205.05.a. and other sections of rule where it occurs. Terminology of “public hearing” and “a meeting open to the public” was

questioned. Section 33-5205(2), *Idaho Code*, uses both terms. It was requested that if there is a distinction between them, state board staff should identify all areas in public school law where the terms are used and offer solutions for possible amendment.

There was no discussion of Docket Number 08-0301-0401 on the new Public Charter Commission rule.

No motions were placed before the joint committee, and no objections will be filed.

The joint meeting of the subcommittees was adjourned at 11:37 A.M.

* On November 12, 2004, the State Board of Education deferred review of the pending rule until a later date, but no later than Wednesday, November 17, 2004.